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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,249	12/20/2001	Gregory D. May	7000-209	9021
27820	7590	08/09/2006	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C. P.O. BOX 1287 CARY, NC 27512			WANG, QUAN ZHEN	
			ART UNIT	PAPER NUMBER
			2613	

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/027,249	MAY ET AL.
Examiner	Art Unit	
Quan-Zhen Wang	2613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 4/20/06 and 5/18/06.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1,3-5,7,10-12 and 14-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,3-5,7,10-12 and 14-18 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 20 December 2001 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed on May 18, 2006 in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 20, 2006 has been entered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "measuring power in the subset of optical signals using the power meter"; and "passes a subset of the optical signals comprising of more than one individual wavelength to the one of the output ports at the same time" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 1, 3-5, 7, 10-12, 14-16, and 17-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites the limitation of "... measuring a power level of the optical signal passed through the wavelength select switch using the power meter; passing a subset of the optical signals comprised of more than one individual wavelength through the

wavelength select switch at substantially the same time; measuring power in the subset of optical signals using the power meter; ..." (emphasis added). However, the instant specification does not illustrate or describe the cited limitation in such a way as to enable one skilled in the art to make and/or use the invention.

Claim 12 recites the limitation of "... a power meter measures power in the subset of the optical signals; the power meter which receives an optical signal from an output ...". However, the instant specification does not illustrate or describe the cited limitation in such a way as to enable one skilled in the art to make and/or use the invention.

Claim 12 recites the limitation of "... a wavelength select switch having output ports to selectively pass a received optical signal to one of the output ports wherein the wavelength select switch passes a subset of the optical signals comprising of more than one individual wavelength to the one of the output ports at the same time ...". However, the instant specification does not illustrate or describe the cited limitation in such a way as to enable one skilled in the art to make and/or use the invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 11-12, 14-16, and 17-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "the optical system" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation of "... a wavelength select switch having output ports to selectively pass a received optical signal to one of the output ports wherein the wavelength select switch passes a subset of the optical signals comprising of more than one individual wavelength to the one of the output ports at the same time ...". However, it is not clear what the cited limitation means. If the both groups of the signal output to the same port at the same time, the two signals will not be separated and a wavelength select switch is completely not necessary.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3-5, 7, 10-12, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugaya (U.S. Patent US 6,873,795 B1) in view of Alexander et al. (U.S. Patent US 5,986,782).

Regarding claims 1 and 12, as it is understood in view of the above 112 problem, Sugaya discloses an apparatus (fig. 11) for measuring optical power in an optical system, comprising: a wavelength select switch (fig. 11, combination of 30 and 31) having output ports (fig. 11, outputs from element 13 and 30) to selectively pass a

received optical signal to one of the output ports (fig. 11, the output from element 13 to element 14), the wavelength select switch (fig. 11, combination of 30 and 31) passes a subset of the optical signals (fig. 11, the output signals from element 30 to element 31) at the same time, and a power meter (fig. 11, combination of PD 14 and PD 31) measures the power in the subset of the optical signals (fig. 11, PD 31); the power meter (fig. 11, PD14) which receives an optical signal (fig. 11, the signal from element 13 to element 14) from an output port (the output from element 13) and measures the power in the optical signal. Sugaya differs from the claimed invention in that Sugaya does not specifically teach displaying an indication of the optical signal power in the optical signal on a monitor to a system administrator. However, it is well known in the art to include an optional indicator to signal the system status. For example, Alexander discloses an optional local alarm indicator (fig. 2, local alarm 59). Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to include an optional local alarm indicator having a monitor to display an indication of the optical signal power in order to provide an alarm signal to indicate the status of the system.

Regarding claims 3 and 14, Sugaya teaches that the optical signal comprises different wavelengths of optical energy (column 3, line 61 to column 4, line 4).

Regarding claims 4-5 and 15-16, Sugaya teaches an optical tap or power splitter (fig. 11, optical tap 22) that diverts a portion of optical signals incident on an optical medium to obtain the optical signals.

Regarding claims 7 and 18, Sugaya further teaches successively directing optical signals through the switch to the power meter and measuring powers (column 13, lines 35-51).

Regarding claim 10, Alexander further teaches to determine if the power in the optical signal has crossed a predetermined threshold and trigger an alarm (fig. 2, local alarm 59) if the power in the optical signal has crossed the predetermined threshold.

Regarding claim 11, as it is understood in view of the above 112 problem, Sugaya further discloses controlling an optical amplifier (fig. 11, combination of 25, 26, 27, 28, and 29) in accordance with the power of the optical signal to regulate optical power of the optical signals on the transmission medium (column 3, line 61 to column 4, line 4).

Regarding claim 17, the modified system of Sugaya and Alexander differs from the claimed invention in that Sugaya and Alexander do not specifically teach that the system comprises a DWDM system. However, Sugaya explicitly teaches that his invention is for a WDM system (abstract). Any one of ordinary skill in the art at the time when the invention was made would understand that the WDM of Sugaya or Alexander reads the claimed DWDM. In addition, the claimed limitation does not result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Therefore, the prior art reads the claimed invention.

***Response to Arguments***

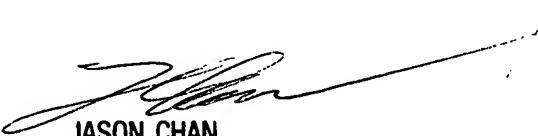
9. Applicant's arguments filed on April 20, 2006 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quan-Zhen Wang whose telephone number is (571) 272-3114. The examiner can normally be reached on 9:00 AM - 5:00 PM, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Qzw  
7/22/06



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